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Via Certified Mailing - Return Receipt

January 9, 2014

Rich Williams, General Manager
Tower Park Marina
14900 West Highway 12
Lodi, CA 95242

Chad Geffert, Host/Manager
Stockton Delta KOA
14900 West Highway 12 / Suite B
Lodi, CA 95242

Westrec Marina Management, Inc.
Westrec Investors, Inc.
c/o Michael M. Sachs, Registered Agent
16633 Ventura Blvd. 6th Floor
Encino, CA 91436

**Re: Supplemental Notice of Violations and Intent to File Suit Under the
Federal Water Pollution Control Act ("Clean Water Act")**

Dear Owners, Operators, and Site Managers:

NOTICE

This Supplemental Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring at Tower Park Marina ("Marina") located at 14900 West Highway 12 in Lodi, California. Notice is being sent to the Stockton Delta KOA and Westrec Marina Management, Inc. ("Discharger") as the responsible owners, operators, lessors, and/or managers who have operational control of this facility. This Notice addresses violations of the CWA from numerous point sources within the Marina to Little Potato Slough, a water of the United States.

CWA § 505(b) requires that 60 days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency (“EPA”) and the State in which the violations occur.

As required by the CWA, this Notice provides notice of the violations that have occurred, and continue to occur at the Marina facility. Consequently, Discharger is placed on formal notice that after the expiration of sixty (60) days from the date of this Notice, River Watch will be free to bring suit in the United States District Court against Discharger for continuing violations of an effluent standard or limitation, National Pollutant Discharge Elimination System (“NPDES”) permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the Code of Federal Regulations and the Central Valley Regional Water Quality Control Board (5S) Water Quality Control Plan or “Basin Plan”.

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

Based on information thus far received, River Watch alleges pollutants including, but not limited to, oil and grease, spent solvents, fuel, paints, toxic metals (including copper, zinc, aluminum, iron, and lead), soaps, biochemical oxygen demand (“BOD”), sanitary waste, bacteria, organics, suspended solids, dust and debris, are discharged from activities undertaken at the Marina. The discharge of these pollutants to Little Potato Slough is the direct result of engine maintenance and repair, rigging, vessel washing and cleaning operations, as well as fueling (specifically the discharge from spills and “topping off” of vessel fuel tanks), and discharges from “shipboard processes” (specifically the discharge of process and cooling water, grey water, bilge, and ballast water). The specific point sources include but are not limited to the sources identified by EPA in its industrial fact sheet covering marinas (see EPA-833-F-06-032 at http://www.epa.gov/npdes/pubs/sector_q_watertransportation.pdf).

River Watch contends Discharger has no individual facility NPDES permit for these discharges, and has failed and is failing to apply for coverage and comply with the General Industrial Storm Water Permit, NPDES Permit No. CA S000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (“General Permit”). These discharges are in violation of the CWA’s prohibition with regard to discharging a pollutant from a point source to waters of the United States, in this instance Little Potato Slough, pursuant to CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

Without obtaining coverage under, and complying with the terms of, the General Permit, Discharger has failed to prepare and implement a Storm Water Pollution Prevention Plan (“SWPPP,”) failed to develop and implement a Monitoring and Reporting Program, and failed to implement Best Available Technology Economically Achievable (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”) to control the discharge of pollutants in storm water at the Marina facility. Under the General Permit, these violations will continue until Discharger submits a Notice of Intent to obtain coverage under the General Permit, implements a SWPPP and Monitoring and Reporting Program, and demonstrates, following sampling and testing after storm events, that its implementation of Best Management Practices (“BMPs”) is effectively controlling storm water and non-storm water discharges from the Marina site. Without obtaining coverage under, and complying with the terms of, an individual facility NPDES permit, Discharger similarly operates without the regulatory controls necessary to eliminate the discharge of unpermitted non-storm water discharges from the Marina.

2. *The activity alleged to constitute a violation.*

Operations at the Marina facility (classified in the General Permit under “Water Transportation Facilities That Have Vehicle (Vessel) & Equipment Maintenance Shops And/Or Equipment Cleaning Operations” under SIC 4493¹) include, but are not limited to: “Fuel Dock with Pump Out;” Boat Sales – New & Used;” “Canvas Shop;” “Boat Detailing;” “Boat Repair Service” (<http://www.towerparkresort.com>, January 2, 2014; *see also* <http://www.westrec.com/ca-towerpark.html>, January 2, 2014). Discharger specifically allows on-site boat repair and maintenance work in the set of marina boat slips located on Little Potato Slough generally abutting the area in which Pacific Boat Services and West Coast Canvas are located – activities over which Discharger as the responsible owners, operators, lessors, or managers, maintains operational control. The EPA has specifically asserted that “water transportation facilities that perform vessel and equipment fluid changes, mechanical repairs, parts cleaning, sanding, blasting, welding, refinishing, painting, fueling, vessel and vehicle exterior washdown” that are covered under SIC 4493, “require coverage under an industrial stormwater permit.” (Page 1, “Industrial Stormwater Fact Sheet Series, Sector Q: Water Transportation Facilities” (EPA Office of Water, EPA-833-F-06-032, December 2006; http://www.epa.gov/npdes/pubs/sector_q_watertransportation.pdf; October 21, 2013)). The EPA also specifically states that marinas are required to obtain a separate individual NPDES permit for discharges of bilge and ballast water, sanitary wastes, pressure wash water, and cooling water originating from vessels. These discharges are not covered under the General Permit. (Page 1, “Industrial Stormwater Fact Sheet Series, Sector Q: Water Transportation Facilities” cited above).

¹SIC 4493 “Marinas” are “[e]stablishments primarily engaged in operating marinas. These establishments rent boat slips and store boats, and generally perform a range of other services including cleaning and incidental boat repair. They frequently sell food, fuel, and fishing supplies, and may sell boats.”

In sum, to properly regulate the activities conducted at the Marina facility in order to control the storm and non-storm water discharge of pollutants into the navigable water of Little Potato Sough, the CWA requires marinas to obtain and comply with the terms and conditions of an individual NPDES permit or seek coverage under the General Permit (or fully obtain exemption under the terms of the General Permit from its requirements). Review of the public record by River Watch does not reveal Discharger having obtained any required permit coverage or allowable exemption from coverage under the CWA for the boat repair and maintenance work in the identified boat slips at the Marina facility, the fuel dock operations, and/or the discharge of bilge and ballast water, grey water from vessels lacking appropriate storage tanks, pressure wash water, and cooling water. In the absence of full coverage under the CWA permitting program, BMPs are not fully implemented, and impermissible discharges are occurring at the Marina in violation of the CWA.

3. *The person or persons responsible for the alleged violation.*

The entities responsible for the alleged violations referred to in this Notice is Tower Park Marina, Stockton Delta KOA and Westrec Marina Management, Inc., including each owner and manager, identified herein as Discharger.

4. *The location of the alleged violation.*

The locations of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is the permanent address of the Marina facility at 14900 West Highway 12, Lodi, California, including the adjoining waters of Little Potato Slough – a water of the United States.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

The range of dates covered by this Notice is from January 9, 2009 to January 9, 2014. River Watch will from time to time update this Notice to include all violations which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is California River Watch, 290 S. Main Street, #817, Sebastopol, CA 95472 – a nonprofit corporation organized under the laws of the State of California, dedicated to protect, enhance, and help restore surface and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna. And to educate the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be addressed to:

David Weinsoff, Esq.
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STATUTORY BACKGROUND

CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States, unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual NPDES permit or a general NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. § 1342. CWA § 402(p), 33 U.S.C. § 1342(p), establishes a framework for regulating storm water discharges under the NPDES program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. EPA has authorized California's State Water Resources Control Board to issue NPDES permits including general NPDES permits in California.

The State Water Resources Control Board elected to issue a statewide general permit for industrial discharges, and issued the General Permit on or about November 19, 1991, modified the General Permit on or about September 17, 1992, and reissued the General Permit on or about April 17, 1997, pursuant to CWA § 402(p).

In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and complied with its terms.

The General Permit contains certain absolute prohibitions. Discharge Prohibition Order Section A(1) of the General Permit prohibits the direct or indirect discharge of materials other than storm water ("non-storm water discharges"), which are not otherwise regulated by a NPDES permit, to the waters of the United States. Discharge Prohibition Order Section A(2) prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation Order Section C(1) prohibits storm water discharges to any

surface or ground water that adversely impact human health or the environment. Receiving Water Limitation Order Section C(2) prohibits storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Quality Control Board Basin Plan.

In addition to absolute prohibitions, the General Permit contains a variety of substantive and procedural requirements that dischargers must meet. Facilities discharging, or having the potential to discharge, storm water associated with industrial activity that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a Notice of Intent ("NOI"). The General Permit requires existing dischargers to file NOIs before March 30, 1992.

Dischargers must also develop and implement a SWPPP which must comply with the standards of BAT and BCT. The SWPPP must, among other requirements:

- Identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges [Permit Section A(2)]. BMPs must implement BAT and BCT [Permit Section B(3)].
- Include a description of individuals and their responsibilities for developing and implementing the SWPPP [Permit Section A(3)]; a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity [Permit Section A(4)]; a list of significant materials handled and stored at the site [Permit Section A(5)]; and, a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, and a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur [Permit Section A(6)].
- Include a narrative assessment of all industrial activities and potential pollutant sources at the facility [Permit Section A(7)].
- Include a narrative description of the BMPs to be implemented at the facility for each potential pollutant and its source, and consider both non-structural BMPs (including "Good Housekeeping") and structural BMPs where non-structural BMPs are not effective [Permit Section A(8)].

- Conduct one comprehensive site compliance evaluation by the facility operator in each reporting period (July 1 – June 30), with SWPPP revisions made, as appropriate, and implemented within 90 days of the evaluation [Permit Section A(9)].

The General Permit requires dischargers to eliminate all non-storm water discharges to storm water conveyance systems other than those specifically set forth in Special Condition Order D(1)(a) of the General Permit and meeting each of the conditions set forth in Special Condition Order D(1)(b).

As part of their monitoring program, dischargers must identify all storm water discharge locations that produce a significant storm water discharge, evaluate the effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control measures set out in the SWPPP are adequate and properly implemented. Dischargers must conduct visual observations of these discharge locations for at least one storm per month during the wet season (October through May) and record their findings in their Annual Report [Permit Section B(4)]. Dischargers must also collect and analyze storm water samples from at least two storms per year in compliance with the criteria set forth in Permit Section B(5). Dischargers must also conduct dry season visual observations to identify sources of non-storm water pollution in compliance with Permit Section B(3).

Permit Section B(14) of the General Permit requires dischargers to submit an “Annual Report” by July 1 of each year to the executive officer of the relevant Regional Water Quality Control Board. Permit Section A(9)(d) of the General Permit requires the discharger to include in the annual report an evaluation of the discharger’s storm water controls, including certifying compliance with the General Permit. *See also* Permit Sections C(9), C(10) and B(14).

The EPA has established Parameter Benchmark Values as guidelines for determining whether a facility discharging storm water has implemented the requisite BAT and BCT. (65 Fed. Reg. 64746, 64767 (Oct. 30, 2000)). CTR limitations are also applicable to all non-storm water and storm water discharges. (40 C.F.R. part 131).

The Central Valley Regional Water Quality Control Board (5S) has established water quality standards for the Sacramento and San Joaquin River basins. This Basin Plan includes a narrative toxicity standard and a narrative oil and grease standard. The Basin Plan provides that “[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.” The Basin Plan establishes limits on metals, solvents, pesticides and other hydrocarbons.

VIOLATIONS

River Watch contends that between January 9, 2009 and January 9, 2014 Discharger violated the CWA, the Basin Plan and the Code of Federal Regulations by reason of discharging pollutants from the Marina facility to waters of the United States without an individual NPDES permit, without compliance with the General Permit, or in violation of the General Permit.

The violations discussed herein, impacting Little Potato Slough, are derived from eye witness reports and records publicly available, or from records in the possession and control of Discharger. Furthermore, River Watch contends these violations are continuing. Halting the discharge of pollutants to this waterway is critical if it is to sustain both maritime and natural habitats for bird, animal, and plant life.

REMEDIAL MEASURES REQUESTED

River Watch believes that implementation of the following remedial measures are necessary in order to bring Discharger into compliance with the CWA and reduce the biological impacts of its non-compliance upon public health and the environment surrounding the Marina facility:

1. Prohibition of the discharges of all pollutants identified in the General Permit applicable to marina facilities, including aluminum, iron, lead, and zinc identified in Table D, petroleum hydrocarbons, oil and grease, anti-freeze, solvents, paints, soaps, and sediment; and prohibition of the discharges of all pollutants identified in a separate NPDES permit applicable to the Marina, including "ballast water," "black-water" and "grey-water" (sanitary waste), "pressure wash water," "bilge-water," and "cooling water."
2. Compliance with the terms and conditions of the General Permit, and BMPs detailed in the EPA's "Industrial Stormwater Fact Sheet Series, Sector Q: Water Transportation Facilities" (EPA Office of Water, EPA-833-F-06-032, December 2006; http://www.epa.gov/npdes/pubs/sector_q_watertransportation.pdf).
3. Compliance with the storm water sampling, monitoring and reporting requirements of the General Permit, and the requirements imposed in any separate NPDES permit.
4. Sampling of storm water at least four (4) times per year over each of the next five (5) years: at "first flush"; the first significant rain after "first flush"; the first significant rain after April 1; and the second significant rain after April 1.

5. Preparation of an updated SWPPP including a monitoring program, with a copy provided to River Watch.

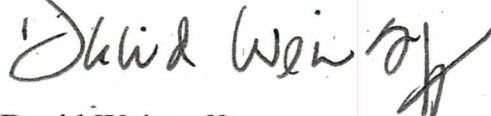
CONCLUSION

CWA § 505(a)(1) and § 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. § 1365(a)(1), § 1365(f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4.

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource are specifically impaired by Discharger's violations of the CWA as set forth in this Notice.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch has cause to file a citizen's suit under CWA § 505(a) against Discharger for the violations of the CWA identified and described in this Notice. During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations identified in this Notice. However, if Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



David Weinsoff

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cc: Administrator
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